IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2922 of 1984

Date of Decision: 30.05.2007

Bija Ram alias Bija ..Appellant

Vs.

Raj Kumar & Anr. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Ashok Aggarwal, Sr.Advocate,
with Mr.Mukul Aggarwal,& Sanjiv Gupta, Advocate,
for the appellant.

Mr.C.B.Goel, Advocate with
Mr.Ram Chander,Akshant Goel and Mr.Dhiraj Lathar,
Advocates, for the respondents.

Vinod K.Sharma,J.

Present regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit for declaration filed by the plaintiff-appellant was ordered to be dismissed.

The plaintiff-appellant had brought a suit on the ground that

the suit land was situated in three villages namely Kalri Jagir, Kalra and Makhali Tehsil and District Karnal. The suit land comprising half share of land measuring 12 kanals 11 marlas as detailed in para No.1(a) of the plaint as per Jamabandi for the year 1969-70 situated at village Kalri Jagir, half share of land measuring 8 kanals 16 marlas as per Jamabandi for the year 1971-72 situated in village Kalra and 1/3 share of land measuring 68 Kanals 11 marlas as per jamabandi for the year 1973-74 of the land situated at village Makhali Tehsil and District Karnal. The plaintiff claimed to be owner in possession of the suit land and defendant No.2 along with brothers and sisters was also claimed to be co-sharers in the khata of the suit land. It was claimed that defendant No.2 owned ¼ share in the land situated in village Kalri Jagir, ¼ share in the land situated at village Kalra and 1/3 share in the land situated in village Makhali. It was further claimed that about a month ago, the defendants restrained the plaintiff-appellant from cultivating the suit land and threatened that in case he entered the suit land he would be killed. It was also stated that the defendants claimed that the suit land was got decreed in their favour. The case set up by the plaintiff was that on inquiry from the court he came to know that the defendants have secured a decree regarding the suit land in favour of defendant No.1 and against the present plaintiff on 2.3.1977 passed by Shri Hari Ram Senior Sub Judge, Karnal in suit No.45 of 1977 titled as Raj Kumar Vs. Bija Ram. The said decree was challenged to be fictitious and obtained by fraud and misrepresentation of facts, betrayal and without jurisdiction. It was claimed that the impugned decree was illegal, void and not binding on the plaintiff on the ground that the plaintiff never received any summons

from the Court. Further that the plaintiff never intended nor he ever transferred any part of the suit land. It was further claimed that he never appeared before the court nor he ever made any statement admitting the claim of the plaintiff therein. It was further claimed that the plaintiff had never filed any written statement nor executed any power of attorney in favour of any counsel and further that the defendant No.2 is the Sarpanch of village Kalri Jagir and is very shrewd, cunning and clever person. It was further claimed that the plaintiff-appellant had desired to get the land partitioned and for this purpose the plaintiff was brought to Karnal on the Basta of an Advocate about 4 and half months ago by representing to the plaintiff that he would engage a counsel for getting the suit land partitioned through court. It was further alleged that defendant No.2 obtained the thumb impression of the plaintiff on many papers and the plaintiff was taken to the court after filing application for partition. The thumb impressions of the plaintiff were taken for partition of the suit land. It was claimed that he has thumb marked the blank papers which was subsequently converted into written statement and Vakalatnama by taking undue advantage of illiteracy and ignorance of the plaintiff. The papers were said to be forged documents.

The suit was contested by both the defendants and the pleas taken by the plaintiff was controverted. It was asserted that the plaintiff was fully aware of the decree against him and subsequently it was on the instruction of his wife and other persons that he had filed the present suit on false grounds. The plea of fraud and misrepresentation was denied and it was claimed that the plaintiff had transferred the suit land willfully in view

of the family settlement. The plaintiff was said to have appeared in the court and accepted the claim of defendant No.1 as he was stated to be living with the plaintiff and serving him. It was also claimed that the Presiding Officer had made inquiries and told him the result of his statement recorded in court. Defendant No.1 claimed himself to be the grand-son in relation of the plaintiff. Certain preliminary objections were also raised.

On the pleadings of the parties the following issues were framed by the trial court:-

1. Whether the plaintiff has no locus-standi to file the present suit? OPD
2. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
3. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD
4. Whether the decree is fictitious, obtained by fraud, misrepresentation of facts, against facts and due to betrayal, without jurisdiction illegal not binding upon the plaintiff and liable to be set aside on the ground mentioned in para No.3 of the plaint? OPP
5. Whether the defendants are entitled to special costs under Section 35-A of CPC? OPD
6. Whether the plaintiff is in possession of the land in suit? OPD
7. Relief.

On issue No.1 it was held that the plaintiff had the locus standi

to maintain the suit. Similarly issue No.2 was also decided in favour of the plaintiff and against the defendants. Issue No.3 was also decided in favour of the plaintiff. However on issue No.4 it was held that it was the settled principle of law that the plea of fraud like any other charge whether made in civil or criminal proceedings must be established beyond reasonable doubt. Suspicion arising out of the circumstances and the doubts cannot take place of the proof. It was observed that the stand of the plaintiff that he did not willingly transfer the suit land was not believed for want of evidence on record. It was further held that the defendants had led sufficient evidence about the transfer of the land willingly by the plaintiff in favour of defendant No.1.

It is pertinent to note that the Presiding Officer was also produced as witness by the defendant who categorically stated that the plaintiff Bija Ram had appeared before him and it was made clear to him that he was admitting the claim of the plaintiff before the court. Copy of the statement made by the plaintiff was placed on record as Ex.D.1 and consequently it was held that the plaintiff had failed to prove fraud and misrepresentation or betrayal and therefore, issue No.4 was decided against the plaintiff. Issue No.5 was decided in favour of the plaintiff, whereas issue No.6 was decided against the plaintiff and consequently the suit was dismissed.

The plaintiff-appellant preferred an appeal before the learned Additional District Judge, Karnal. The learned lower appellate court affirmed the findings recorded by the learned trial court and dismissed the appeal. The learned lower appellate court rejected the plea of fraud and

misrepresentation by observing that except for self-serving statement of PW Bija Ram appellant no other evidence produced on record as against the evidence produced by the defendant-respondents who examined Shri Hari Ram Additional District Judge as well as Shri Dharam Pal A.D.A., official of Superintendent of Police, Kurukshetа besides the statement of Raj Kumar respondent No.2. Learned lower appellate court also on the basis of pedigree table produced on record came to the conclusion that defendant No.1 was the grand-son of the plaintiff related to the appellant in the 7th digree. The plea of the plaintiff-appellant that respondent No.1 had no right to succession and therefore, there was no question of family settlement between the parties was rejected by observing that the family arrangement could be oral and if oral no registration was required. Learned lower appellate court came to the conclusion that even if one of the parties to the settlement had no title but under the arrangement claim or title is relinquished in favour of another person by acknowledging him to be the sole owner then the antecedent title must be assumed and the court can give assent to the same. For this purpose reliance was placed on the judgment of Hon'ble Supreme Court in the case of **Kale and others Vs. Deputy Director of Consolidation and others AIR 1976 SC 807.** Learned lower appellate court by placing reliance on the judgment of Hon'ble Supreme Court in the case of **Krishan Bihari Lal (dead) by his legal representatives Vs. Gulab Chand and others AIR 1971 SC 1041** was pleased to hold that 'family' in context of family arrangement is not to be understood in narrow sense of being a group of persons who were recognised under law and having the right of succession or having claim to

a sharer in the property in dispute. If the dispute which is settled is one between the near relations then the settlement of such a dispute can be considered as a family settlement. Thus, the claim that the defendant respondent No.1 was not related was rejected and findings on issues No.4 and 6 were affirmed. Consequently, the appeal was also dismissed.

Learned counsel for the appellant contended that the following substantial questions of law arise for consideration in this appeal.

1. Whether the findings of the learned courts below are perverse in view of the evidence brought on record showing that the decree was obtained by respondent No.1 on the basis of fraud and misrepresentation?
2. Whether the decree in favour of respondent No.l required registration and therefore, did not confer any right on respondent No.1?

Learned counsel for the appellant vehemently contended that the appellant-plaintiff was an old man who supported his assertions in the plaint to the effect that the decree was obtained by defendant No.1 by playing a fraud as he was misled to believe that he was signing the papers for the purpose of partition of the land and his statement was also taken in this regard. This contention of the learned counsel for the appellant cannot be accepted as the learned courts below on appreciation of evidence have recorded a concurrent finding of fact that the appellant had failed to prove fraud or misrepresentation. As a matter of fact, in the present case defendant-respondents produced the Presiding Officer as well as an Advocate engaged by the plaintiff-appellant who supported the case set up

by the defendant which clearly proved that the stand taken by the plaintiff that the decree was obtained by fraud and misrepresentation was not correct and therefore, no error can be found with the judgments and decrees passed by the learned trial court and therefore the first question of law raised by the plaintiff is decided against him.

As regards the second question of law, it may be noticed that no such plea was taken before the courts below. Rather a positive finding was recorded that oral family settlement did not require registration. Learned counsel for the respondents by placing reliance on the judgments of Hon'ble Supreme Court in the case of **Som Dev and Ors. Vs. Rati Ram and Anr 2006 (4) RCR (Civil) 303** contended that the decree passed on the admission of a party did not require registration. Para No.10 of the said judgment reads as under:-

> "10. Almost the whole of the argument on behalf of the appellants here, is based on the ratio of the decision of this Court in Bhoop Singh (supra). It was held in that case that exception under clause (vi) of Section 17(2) of the Act is meant to cover that decree or order of a Court including the decree or order expressed to be made on a compromise which declares the pre-existing right and does not by itself create new right, title or interest in praesenti in immovable property of the value of Rs.100/- or upward. Any other view would find the mischief of avoidance of registration which requires payment of stamp duty embedded in the decree or order. It would, therefore, be the duty of the Court to examine in each case

whether the parties had pre-existing right to the immovable property or whether under the order or decree of the Court one party having right, title or interest therein agreed or suffered to extinguish the same and created a right in praesenti in immovable property of the value of Rs.100/- or upwards in favour of the other party for the first time either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable. Their Lordships referred to the decisions of this Court in regard to the family arrangements and whether such family arrangements require to be compulsorily registered and also the decision relating to an award. With respect, we may point out that an award does not come within the exception contained in clause (vi) of Section 17 (2) of the Registration Act and the exception therein is confined to decrees or orders of a Court. Understood in the context of the decision in Hemanta Kumari Debi (supra) and the subsequent amendment brought about in the provision, the position that emerges is that a decree or order of a court is exempted from registration even if clauses (b) and (c) of Section 17 (1) of the Registration Act are attracted, and even a compromise decree comes under the exception, unless, of course, if takes in any immovable property that is not the subject matter of the suit."

Thus, in view of the authoritative pronouncement of the Hon'ble Supreme Court second question of law is also answered against the

appellant and in favour of the respondents.

Consequently, this regular second appeal is dismissed and the judgments and decree passed by the courts below are affirmed.

May 30,2007 **(Vinod K.Sharma)**
rp **Judge**